broader than necessary for effecting this purpose. The ordinance was equally applicable to all parts of the city, yet it was proved that there were many wholly unoccupied blocks where the maintenance of a laundry could give rise to no conceivable danger of a general conflagration. The ordinance was therefore held to be discriminatory, as its provisions were not reasonably adapted to secure the ostensible end sought. It is interesting to note that the California state court construing the same regulation, but in a different case, held it to be constitutional. *Ex parte Wong Wing,* 138 Pac. 695. But in that case the court considered only the first of the two problems outlined above, and did not enter into any discussion of whether or not the ordinance was needlessly broad in its application. It will be observed that in *Barbier* v. *Connelly,* supra, the application of the ordinance was limited to certain districts, presumably those which would be most endangered by the maintenance of fires in these laundries during the prohibited hours.

CONTRACTS—CONTRACT TO PAY IN KIND.—Defendant bought brick from plaintiffs, contracting to pay in kind, no time for payment being specified. Defendant was willing that plaintiffs take sufficient brick from his kilns to pay for those he had purchased, but made no offer to return any of them. Plaintiffs never demanded payment in kind and several years later brought this action to recover the value of the brick. The auditor found that Jan. 1, 1909, the year following the sale, would have been a reasonable time within which defendant should have repaid in kind. *Held,* that defendant's right to pay in specific articles and not in money was a privilege to be exercised within a reasonable time and his failure to do so perfected plaintiff's right of action for the price of the brick, the contract not requiring a demand, and no special circumstances making a demand necessary before defendant could perform. *Nelson & Wallace* v. *Gibson* (Vt. 1916), 98 Atl. 1006.

The courts have generally agreed that a contract to pay in specific articles on a day specified, if not fulfilled by delivery at the time fixed, becomes a debt payable in money and that no demand is necessary. *Marshall* v. *Ferguson,* 23 Cal. 66; *Games* v. *Manning,* 2 Green (Ia.) 251; *Stewart* v. *Morrow,* 1 Grant (Pa.) 204. In *State* v. *Mooney,* 65 Mo. 494, it was held that a demand and refusal was necessary to convert the agreement into an obligation to pay money, when the time of payment was indefinite. The same conclusion has been reached in *Ragland* v. *Wood,* 71 Ala. 145; *McBain* v. *Austin,* 16 Wis. 87; *Isaacs* v. *N. Y. Plaster Works,* 40 N. Y. Supr. Ct. Rep. 277; *Newton* v. *Wales,* 3 Robt. 453. The court in the principal case regarded the right to pay in specific articles as a privilege to be exercised within a reasonable time, when not otherwise specified by the parties. A formal demand would not have affected defendant's situation, since he knew where to deliver the brick, and plaintiffs were not required to do anything before he could act. The reasoning in this case is supported by *Cass* v. *McDonald,* 39 Vt. 65, and *McKinnie* v. *Lane,* 230 Ill. 544. In most of the cases requiring demand where time is not specified, some act remained to be per-

formed by the obligee to enable the obligor to deliver. They are not in conflict with the principal case but are distinguishable because of special facts or circumstances.

CONTRACTS—PERFORMANCE OF CONTRACTUAL OBLIGATION.—Plaintiff agreed with defendant to construct a portion of a roadbed. The sides of the cut were to be left vertical but the condition of the soil made this impossible and it was found necessary to remove a large amount of material not contemplated by the parties. Defendant promised additional compensation for this extra labor. In an action by the plaintiff on the original contract the court submitted the subsequent agreement to the jury. Defendant contended that there was no consideration for the promise of extra pay, as plaintiff was already legally bound to do the work. *Held,* that the additional burden not contemplated in the first contract was a valid consideration for the subsequent promise, but the questions ought not to have been submitted to the jury because it was not pleaded. *Straw* v. *Temple* (Utah 1916), 159 Pac. 44.

The general rule is that a promise to pay additional compensation for doing something under a subsisting contract which the promisee is already legally bound to do is without consideration and unenforceable. *Benedict* v. *Green-Robbins Co.,* 26 Cal. App. 468, 147 Pac. 486; *Shriner* v. *Craft,* 166 Ala. 146, 28 L. R. A. 450; *Wear Bros.* v. *Schmelzer,* 92 Mo. App. 134; *Sands* v. *Gilleran,* 144 N. Y. Supp. 337; *Moran* v. *Peace,* 72 Ill. App. 135; *Bush* v. *Rawlins,* 89 Ga. 117. Some courts have taken the view that where one of the parties to a contract (other than an agreement to pay money) refuses to perform the same, and the other promises to pay extra compensation to induce him to carry out his agreement, there is a valid consideration for the promise. Under the reasoning in these cases the party has a right to elect whether he will perform the contract or abandon it and pay damages. *Domenico* v. *Alaska Packers' Assoc.,* 112 Fed. 554; *Scanlon* v. *Northwood,* 147 Mich. 139. A few decisions are based on the theory that the forming of the new contract is a rescission of the old one and that the liabilities under the latter are discharged. *Evans* v. *Ore. & Wash. Ry. Co.,* 58 Wash. 429, 108 Pac. 1095; *Coyner* v. *Lynde,* 10 Ind. 282. In *Endriss* v. *Belle Isle Ice Co.,* 49 Mich. 279, it was decided that the new agreement was independent of the old contract and was regarded as an effort to mitigate the damages caused by the breach of the latter. The principal case adopts the view that although there is ordinarily no consideration for a promise of additional pay to induce performance, yet where there is a burden not contemplated by the parties cast upon the contractor there is a valid consideration for the promise. This exception to the general rule is ordinarily followed in this country. *Linz* v. *Schuck,* 106 Md. 220, 67 Atl. 286; *Michaud* v. *MacGregor,* 61 Minn. 198; *King* v. *Duluth etc. Ry Co.,* 61 Minn. 482; *John King Co.* v. *Louisville & N. R. Co.,* 131 Ky. 46.

CORPORATIONS—CONSTRUCTION OF THE TERMS "NET ANNUAL EARNINGS" AND "SINKING FUND."—X Railroad Company purchased canals of the state which it turned over to X Canal Company in return for nearly all the stock of the latter, which it continued to hold and by means of which it entirely